

# CRS Report for Congress

## The Low-Income Home Energy Assistance Program (LIHEAP): Program and Funding

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Libby Perl  
Analyst in Social Legislation  
Domestic Social Policy Division



Prepared for Members and  
Committees of Congress

# The Low-Income Home Energy Assistance Program (LIHEAP): Program and Funding

## Summary

The Low-Income Home Energy Assistance program (LIHEAP), established in 1981 (P.L. 97-35), is a block grant program under which the federal government gives states, territories, and tribes annual grants to operate home energy assistance programs for low-income households. The LIHEAP statute authorizes two types of funds: regular funds, which are allocated to all states based on a statutory formula, and contingency funds, which are allocated to one or more states at the discretion of the Administration.

For FY2007, Congress appropriated \$1.98 billion for regular funds and \$181 million for contingency funds (P.L. 110-5), the same amount appropriated in the Departments of Labor, Health and Human Services, and Education Appropriations Act for FY2006 (P.L. 109-149). The President's budget request for FY2008 is \$1.782 billion, of which \$1.5 billion would be for regular funds and \$282 million for contingency funds. This is the same amount of funds that the President requested for FY2007; however, the entire amount in the FY2007 request would have gone to regular funds.

In FY2006, Congress twice appropriated funds for LIHEAP. First, Congress appropriated \$2.161 billion, of which \$1.98 billion was regular funds and \$181 million was contingency funds. The funds were appropriated in the Departments of Labor, Health and Human Services, and Education Appropriations Act (P.L. 109-149). Congress added \$1 billion to LIHEAP on March 20, 2006 (P.L. 109-204). Of this amount, \$500 million was allocated to regular funds and \$500 million was allocated to contingency funds. Thus, a total of \$3.161 billion was appropriated for LIHEAP for FY2006, \$2.48 billion for regular funds and \$681 million for contingency funds. This is the most funding that has been appropriated for LIHEAP in the history of the program.

The Administration has not distributed contingency funds for FY2007 but made three contingency fund distributions in FY2006. The most recent occurred on September 12, 2006, when just under \$80 million was distributed to 14 states for winter heating needs. In two previous distributions, the Administration released \$600 million in contingency funds: of this amount, \$500 million went to 25 states on March 24, 2006, and on January 5, 2006, \$100 million went to all states, the District of Columbia, and the territories. Approximately \$21 million in contingency funds remains available from FY2005, and \$181 million in FY2007 contingency funds is available.

In FY2004, the most current year for which data is available, some 5.0 million households received LIHEAP heating/winter crisis assistance, with an average benefit of \$277, compared with an estimated 4.8 million households in FY2003. Approximately 308,000 households received cooling aid in FY2004 and 88,000 received summer crisis assistance (compared to 493,000 and 71,000 in FY2003). The average cooling/summer crisis benefit was \$192. This report will be updated as legislative or program activities warrant.

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# The Low-Income Home Energy Assistance Program (LIHEAP): Program and Funding

## Introduction

The Low-Income Home Energy Assistance program (LIHEAP), established in 1981 by Title XXVI of P.L. 97-35, is a block grant program under which the federal government gives states, territories, and tribes annual grants to operate home energy assistance programs for low-income households. The LIHEAP statute provides for two types of program funding: regular funds and contingency funds. Regular funds are allotted to states according to methods prescribed by the LIHEAP statute.<sup>1</sup> The second type of LIHEAP funding, called contingency funds, may be released and allotted to one or more states at the discretion of the President and the Secretary of Health and Human Services (HHS).

In FY2007, Congress appropriated \$1.98 billion in regular funds and \$181 million in contingency funds for LIHEAP (P.L. 110-5). These are the same amounts that were appropriated in the Departments of Labor, Health and Human Services, and Education Appropriations Act in FY2006 (P.L. 109-149) as reduced by a 1% across-the-board rescission (P.L. 109-148). In addition to the amounts initially appropriated for LIHEAP in FY2006, P.L. 109-204 made \$1 billion available, \$500 million for regular funds and \$500 million for contingency funds.

In FY2004, the most current year for which data could be obtained from the U.S. Department of Health and Human Services (HHS), an estimated 5.0 million households received help meeting heating costs (i.e., heating assistance and/or winter/year-round crisis assistance).<sup>2</sup> In FY2004, approximately 308,000 households received cooling assistance, and 88,000 received summer crisis aid.<sup>3</sup> Approximately 112,000 households received weatherization assistance through LIHEAP in FY2004.

## Recent Developments

**FY2008 Proposed LIHEAP Funding.** The President released his FY2008 budget on February 5, 2007. In it, he proposed to provide \$1.782 billion for

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<sup>1</sup> See Section 2604(a)-(d) of the Low Income Home Energy Assistance Act (Title XXVI of P.L. 97-35), as amended. The section is codified at 42 U.S.C. §8623(a)-(d).

<sup>2</sup> U.S. Department of Health and Human Services, LIHEAP Office.

<sup>3</sup> The amount of overlap between households that received cooling aid and summer crisis aid is not known; thus an estimated number of households that received aid related to cooling (comparable to those receiving aid with heating costs) is not available.

LIHEAP. This is the same amount the President proposed for FY2007, but the breakdown of funds is different. In FY2007, the Administration's budget requested that the entire amount be allocated to regular funds, while for FY2008, \$1.5 billion would be allocated to regular funds and \$282 million to contingency funds.

**FY2007 LIHEAP Funding.** For FY2007, Congress appropriated \$1.98 billion in regular funds and \$181 million in contingency funds through a year-long continuing resolution (P.L. 110-5). This is the same amount appropriated for LIHEAP in the FY2006 Departments of Labor, Health and Human Services, and Education Appropriations Act (P.L. 109-149) as reduced by a 1% across-the-board rescission (P.L. 109-148). The total amount appropriated in FY2007 exceeded the President's budget request of \$1.782 billion by \$380 million. The House Appropriations Committee would have provided \$1.93 billion in regular LIHEAP funds and \$181 million in contingency funds in the Departments of Labor, Health and Human Services, and Education Appropriations Act (H.R. 5647). The Senate Appropriations Committee would have provided \$1.98 billion in regular LIHEAP funds and \$181 million in contingency funds in its version of the spending bill (S. 3708). Prior to enactment of P.L. 110-5 on February 15, 2007, three continuing resolutions provided funding for LIHEAP.<sup>4</sup>

**FY2006 LIHEAP Funding.** Congress appropriated a total of \$3.161 billion to LIHEAP for FY2006 in two separate laws, the most funding that has ever been appropriated for LIHEAP. The Departments of Labor, Health and Human Services, and Education Appropriations Act (P.L. 109-149) allocated \$2 billion for regular funds to be distributed to all states, and \$183 million as emergency contingency funds, to be distributed at the discretion of the Secretary of HHS. After a 1% across-the-board rescission in the Department of Defense Appropriations Act (P.L. 109-148), these amounts were reduced to \$1.98 billion and \$181 million.<sup>5</sup> Congress made available an additional \$1 billion for LIHEAP on March 20, 2006, \$500 million in regular block grant funds, and \$500 million in contingency funds (P.L. 109-204). On March 24, the Administration distributed the entire \$500 million in contingency funds to 25 states based on average temperature and the energy sources used by low-income households.

**Table 1**, below, shows LIHEAP funding for FY2006 and FY2007 and proposed funding for FY2008.

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<sup>4</sup> These were P.L. 109-289, P.L. 109-369, and P.L. 109-383.

<sup>5</sup> HHS makes proportionate cuts in the individual budget authorities within LIHEAP — regular funds, contingency funds, Leveraging Incentive and REACH grants, and training and technical assistance — in order to comply with rescission requests.

**Table 1. Final FY2006 and FY2007 LIHEAP Funding and Proposed FY2008 Funding**

	Regular		Contingency	Total
	State formula grants	Set-asides (\$300,000 for technical assistance, which is permanently authorized in the statute)		
<b>Final FY2006 Appropriation<sup>a</sup></b>				
P.L. 109-149	\$1.98 billion	— \$27.225 million — leveraging incentive fund	\$181 million	\$2.161 billion
P.L. 109-204 <sup>b</sup>	\$500 million	None	\$500 million	\$1.0 billion
Total	\$2.48 billion	— \$27.225 million — leveraging incentive fund	\$681 million	\$3.161 billion
<b>Final FY2007 Appropriation</b>				
P.L. 110-5	\$1.98 billion	— \$27.225 million — leveraging incentive fund	\$181 million	\$2.161 billion
<b>FY2008 Proposed Funding</b>				
President's Request	\$1.50 billion	— \$27.225 million — leveraging incentive fund (this amount is assumed in Administration budget documents)	\$282 million	\$1.782 billion

**Source:** Congressional Research Service based on P.L. 109-148, P.L. 109-149, P.L. 109-171, P.L. 109-204, P.L. 110-5, and the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF) *FY2008 Justification of Estimates for Appropriations Committees*.

- a. Under the Department of Defense Appropriations Act (P.L. 109-148), discretionary spending in FY2006 was reduced by 1% through an across-the-board rescission. The amounts in P.L. 109-149 include the rescission.
- b. The funds made available for FY2006 in P.L. 109-204 were originally appropriated for FY2007 in the Deficit Reduction Act of 2005, P.L. 109-171. Congress shifted the funds to FY2006 in P.L. 109-204.

**LIHEAP Contingency Funds.** The Administration has not yet released contingency funds in FY2007. Currently just under \$21 million in contingency funds from the FY2005 appropriations law (P.L. 108-447) remains available until expended. In addition, Congress appropriated \$181 million in contingency funds for FY2007 in its year-long continuing resolution (P.L. 110-5).

The Administration released contingency funds on three occasions in FY2006. In its first distribution, on January 5, 2006, the Administration released \$100 million. The funds were disbursed to all states, the District of Columbia, and the territories using the regular block grant allocation, weighted by the percentage of low-income households in each state that use natural gas, heating oil, and propane for heat. On

March 24, 2006, the Administration released an additional \$500 million in contingency funds to 25 states. To receive funds, states must have experienced an average winter temperature of 40 degrees Fahrenheit or lower, and at least 60% of low-income households in the state must have used natural gas, heating oil, or propane to heat their homes. The Administration then distributed funds to those states that met these threshold requirements using the percentage of low-income households heating their homes with natural gas, heating oil, and propane, the percentage of funds received under the block grant allocation, and average temperature. The third distribution of funds occurred on September 12, 2006, when the Administration released \$80 million to 14 states to help pay heating costs for the upcoming winter. States were eligible if they experienced an average temperature of 47 degrees Fahrenheit or lower between October 5, 2005, and March 31, 2006, and at least 15% of low-income households used heating oil as their primary heating source. (For a breakdown of funds, see **Table 5**.)

**Table 2**, below, shows recent federal funding levels for LIHEAP, including the amount of contingency funds released.

**Table 2. Recent LIHEAP Funding**

(dollars in millions; sums may not equal totals due to rounding)

Fiscal year	Funds appropriated		Contingency funds distributed <sup>a</sup>			Total funds distributed <sup>b</sup>	
	Regular <sup>c</sup>	Contingency	To all states	To some states	Subtotal	Subtotal (to all states)	Total
2002	1,700	300	0	100	100	1,700	1,800
2003	1,788	0	200	0	200	1,988	1,988
2004	1,789	99	40	59	99	1,829	1,889
2005	1,885	298	250	27.25	277.25	2,135 <sup>c</sup>	2,162 <sup>c</sup>
2006	2,480	681	100	580	680	2,580	3,160
2007	1,980	181	0	0	0	1,980	1,980

**Source:** Tables prepared by the Congressional Research Service (CRS).

- The amount of contingency funds appropriated in a fiscal year may differ from the amount of contingency funds that are distributed in that fiscal year for two reasons: First, the LIHEAP statute gives the Administration discretion to release (or not release) any of the available contingency funding. Further, these funds, as directed by the Congress in its appropriations language, may be available for release in one or more years.
- Regular funds, all of which are included in both of the Total Funds Distributed columns, include all regular funding distributed by formula to the states, the tribes, and the District of Columbia, as well as set-asides for the territories, leveraging incentive grants, REACH grants, and technical assistance (with total set-asides of approximately \$30 million). The "Subtotal to all states" column includes all regular funds plus any contingency funds that were distributed to all states; the "Total" column includes all regular funds plus any contingency funds that were distributed to one or more states.
- Regular LIHEAP funds are made available to states on a quarterly basis (October, January, April, and July). However, states may specify what percentage of their total allotment they wish to receive in each quarter, and many states receive all, or the great majority of, their LIHEAP funds in the first two quarterly disbursements.

**LIHEAP Reauthorization.** Authorization for LIHEAP expires at the end of FY2007 (P.L.109-58). The program has never been unauthorized, and it is anticipated that the 110<sup>th</sup> Congress will reauthorize the program. Committees with jurisdiction over LIHEAP are the Senate Health, Education, Labor, and Pensions Committee and the House Education and Labor Committee.

**LIHEAP Legislation in the 110<sup>th</sup> Congress.** Early in the first session of the 110<sup>th</sup> Congress, two bills have been introduced that would affect LIHEAP. H.R. 153, the LIHEAP Equity Act of 2007, would mandate that no more than 50% of the funding provided under LIHEAP could be made available for heating purposes. The second bill, S. 669, the LIHEAP Emergency Reform Act, concerns contingency funds. The bill would allow a state governor to apply to the Secretary of Health and Human Services for certification that there is an emergency in his or her state (as defined by the LIHEAP statute) and for an allotment of contingency funds in response to the emergency.

## Program Rules and Benefits

Federal LIHEAP requirements are minimal and leave most important program decisions to the states, the District of Columbia, the territories, and Indian tribes and tribal organizations (collectively referred to as grantees) who receive federal funds. The federal government (HHS) may not dictate how grantees implement “assurances” that they will comply with general federal guidelines.

**Federal Eligibility Standards and Grantee Responsibility.** Federal law limits LIHEAP eligibility to households with incomes up to 150% of the federal poverty income guidelines (or, if greater, 60% of the state median income). States may adopt lower income limits, but no household with income below 110% of the poverty guidelines may be considered ineligible. States may separately choose to make eligible for LIHEAP assistance any household of which at least one member is a recipient of Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps, or certain needs-tested veterans’ programs. LIHEAP assistance does not reduce eligibility or benefits under other aid programs.

Within these limits, grantees decide which, if any, assistance categories to include, what income limits to use, and whether to impose other eligibility tests. The statute gives priority for aid to households with the greatest energy needs or cost burdens, especially those that include disabled individuals, frail older individuals, or young children. Federal standards require grantees to treat owners and renters “equitably,” to adjust benefits for household income and home energy costs, and to have a system of “crisis intervention” assistance for those in immediate need. The LIHEAP definition of “energy crisis” leaves room for each state to define the term slightly differently, although generally, crisis assistance is provided to households that are in danger of losing their heating or cooling due to problems with equipment, receipt of a utility shutoff notice, or exhaustion of a fuel supply.<sup>6</sup> Federal rules also

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<sup>6</sup> The LIHEAP statute defines an energy crisis as “weather-related and supply shortage emergencies and other household energy-related emergencies.” 42 U.S.C. §8622(3). For (continued...)

require outreach activities, coordination with the Department of Energy's Weatherization Assistance Program, annual audits and appropriate fiscal controls, and fair hearings for those aggrieved. Grantees decide the mix and dollar range of benefits, choose how benefits are provided, and decide what agencies will administer the program.<sup>7</sup>

**Kinds of Energy Assistance Available.** Funds are available for four types of energy assistance to eligible households:

- help paying heating or cooling bills;
- low-cost weatherization projects (e.g., window replacement or other home-energy related repair; limited to 15% of allotment unless a grantee has a waiver for up to 25%);
- services to reduce need for energy assistance (e.g., needs assessment, counseling on how to reduce energy consumption; limited to 5% of allotment); and
- help with energy-related emergencies (winter or summer crisis aid).

**Use of Funds.** The majority of LIHEAP funding is used to offset home heating costs. In FY2003, the most recent year in which data regarding total spending is available, approximately 72% of all LIHEAP funds were used to provide heating assistance or crisis aid related primarily to heating needs; all states (including the District of Columbia) provided some heating assistance, and nearly all also offered crisis aid related to heating needs. In that same year, 3.5% of funds were used for cooling/summer crisis aid; just 15 states offered cooling assistance and only six offered summer crisis aid. Also in FY2003 10.5% of total LIHEAP funds were used for weatherization services (provided by 46 states); 8.2% of available funds were used for administration and planning purposes (51 states), and 1% of the FY2003 funds were used to offer services to reduce the need for energy assistance (provided by 21 states).<sup>8</sup>

**Households Served.** Since the LIHEAP program began in the early 1980s, both the percentage of eligible households served and the absolute number of households receiving heating/winter crisis assistance have generally declined. However, in FY2003 and FY2004 both figures increased somewhat, to 4.8 million and 5.0 million recipients. (See **Table 3** below.) The number of households receiving cooling assistance reached its high point in FY2002, with more than half a million recipients. However, in FY2003 and FY2004, the number of recipients fell below that number.

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<sup>6</sup> (...continued)

the state definitions of "crisis" see the HHS LIHEAP Networker FY2007 compilation of definitions, available at [<http://www.liheap.ncat.org/tables/FY2007/CrisisDef2007.doc>].

<sup>7</sup> Information regarding state LIHEAP program characteristics and contacts is available at [<http://www.liheap.ncat.org/sp.htm>].

<sup>8</sup> Based on state-reported total LIHEAP expenditures for FY2003 (including federal and any supplemental non-federal funding) of \$2.112 billion. *LIHEAP Report to Congress for FY2003*, p. 14.

States reported that in FY2004, approximately 4.6 million households received assistance with heating payments; 308,000 received cooling aid; approximately 1.1 million received winter/year-round crisis aid; 88,000 received summer crisis aid; and 112,000 received weatherization assistance. Because many households may receive more than one kind of LIHEAP assistance, a total, unduplicated number of households assisted is not available. However, these data are used to estimate that some 5.0 million households received heating assistance or heat-related crisis aid in FY2004.<sup>9</sup>

The Census Bureau's 2003 Annual Social and Economic Supplement indicates that among all households receiving LIHEAP heating assistance, about 36% had at least one member 60 years of age or older; about 48% had at least one disabled member; and some 23% included at least one child five years of age or younger. These same census data showed that a minority of households receiving LIHEAP heating assistance also received other kinds of federal aid: an estimated 12% received TANF; 24% received SSI; and 26% lived in rent-subsidized or public housing.<sup>10</sup>

**Benefit Levels.** The constant dollar value of LIHEAP heating/winter crisis benefits declined from the program's beginning until FY1998 — in FY1983, the average benefit was \$209 dollars, and by FY1998 it was \$117. Although the value of benefits went up from FY1999 through FY2001, in FY2004 the average constant dollar benefit was down to \$132. In nominal dollars, the average heating/winter crisis benefit fell from \$312 in FY2003 to \$277 in FY2004. The average nominal cooling/summer crisis benefit, which is available to a more limited number of households in far fewer states, had largely risen until FY2002, when it fell sharply to \$145 from \$211 in FY2001. In FY2003, this benefit stayed approximately the same, at \$148, and in FY2004 it increased to \$192.<sup>11</sup>

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<sup>9</sup> Department of Health and Human Services, LIHEAP Office.

<sup>10</sup> *LIHEAP Report to Congress, FY2003.*, pp. 19-21.

<sup>11</sup> Department of Health and Human Services, *FY2004 LIHEAP Home Energy Notebook*, p. 30. In constant (1981 dollars) the average cooling/summer crisis benefit was worth \$57 in FY1983, \$107 in both FY2000 and FY2001, \$70 in FY2002, \$80 in FY2003, and \$91 in FY2004.

**Table 3. LIHEAP Heating/Winter Crisis Aid, Selected Years**

	Fiscal year									
	1983	1990	1993	1998	1999	2000	2001	2002	2003	2004
<b>Households</b>										
Number receiving aid (in millions)	6.8	5.8	5.6	3.9	3.6	3.9	4.8	4.4	4.8	5.0
Number federally eligible (in millions)	22.2	25.4	28.4	29.1	29.0	29.4	30.4	32.7	34.5	35.4
Federally eligible and receiving aid	31%	23%	20%	13%	12%	13%	16%	13%	14%	14%
<b>Benefit Levels</b>										
Average benefit (nominal dollars)	\$225	\$209	\$201	\$213	\$237	\$270	\$364	\$291	\$312	\$277
Average benefit (constant 1981 dollars) <sup>a</sup>	\$209	\$147	\$129	\$117	\$128	\$140	\$187	\$147	\$154	\$132
<b>Costs Offset</b>										
Portion of winter heating bill covered by LIHEAP (for all federally eligible households) <sup>b</sup>	18%	15%	11%	9%	9%	11%	14%	12%	NA <sup>c</sup>	8%
Portion of household income required for home heating (for LIHEAP-recipient households)	Before receiving LIHEAP benefit									
	8.3%	4.5%	4.7%	3.4%	3.3%	3.3%	4.7%	3.6%	4.9%	4.8%
	After receiving LIHEAP benefit									
	2.6%	2.0%	2.4%	1.3%	1.1%	1.0%	1.7%	1.3%	NA <sup>c</sup>	2.7%

**Source:** Table compiled by Congressional Research Service (CRS) based on information provided by or included in the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance, *LIHEAP Home Energy Assistance Notebooks* for FY1998, FY2000, FY2001, FY2002, FY2003, and FY2004.

- The constant dollars are based on the 1981 value of the benefit (using the CPI-U index).
- These percentages represent the estimated portion of combined home heating costs for all households federally eligible for LIHEAP that was offset by LIHEAP heating/winter crisis assistance.
- HHS did not make FY2003 data for these trends available.

The LIHEAP benefit now covers a smaller portion of home heating bills than in earlier years, 8% in FY2004 compared to 18% in FY1983. And while the portion of household income required for home heating by LIHEAP-recipient households *before* receiving the LIHEAP benefit is less than when the program began, the portion of a recipient household's budget required for home heating *after* receiving the LIHEAP benefit is slightly more in FY2004 than it was in FY1983 (2.7% compared to 2.6%). In recent years, leading up to FY2004, the percentage of a household's budget required to pay for heating post-benefit had been in the single digits. (See **Table 3**.)

Apart from federal funding levels, a variety of factors help determine to what extent LIHEAP is able to meet its stated goal of assisting low-income households in meeting their home energy needs.<sup>12</sup> These include

- the cost of energy for a given household (influenced by energy price fluctuations and variation in kinds of fuels used);
- the amount of energy consumed (influenced by severity of the weather, energy efficiency of housing, and expected standards of comfort); and
- the number of eligible households (influenced by population size and health of the economy).

## Funds and Their Distribution

The LIHEAP statute authorizes regular funds appropriations, which are allocated to all states based on a statutory formula, and contingency fund appropriations, which are allocated to one or more states at the discretion of the Administration. It also authorizes a smaller amount of funds for incentive grants to states that leverage non-federal resources for their energy assistance programs.

**Regular Funds.** Regular funds are distributed to states according to a three-tier formula in the LIHEAP statute and based on the level of funds appropriated in a given fiscal year.<sup>13</sup> The three-tier formula is the result of changes to the LIHEAP statute in 1984 through the Human Services Reauthorization Act (P.L. 98-558). Prior to the changes in P.L. 98-558, LIHEAP allotments to the states were based largely on home heating needs with minimal consideration of cooling costs, and did not provide for the use of updated data, including population and energy costs.<sup>14</sup>

The new distribution formula provides that in determining state allotments the Department of Health and Human Services shall use “the most recent satisfactory data available” and consider home energy costs of low-income households (not simply all households, as was previously the case). These changes to the calculation of state allotments mean that some states will receive a smaller percentage share of regular funds, while some will receive a larger share. In order to offset the losses to certain states resulting from the formula change, and “prevent severe disruption to

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<sup>12</sup> See also CRS Report RS20761, *LIHEAP and Residential Energy Costs*, by Bernard Gelb.

<sup>13</sup> States are defined to include the District of Columbia. Indian tribes receive funds out of state allotments that are proportionate to their share of LIHEAP-eligible households in the state. Before state allotments are made, the statute provides that at least one-tenth (but not more than one-half) of 1% of the total appropriation must be set aside for energy assistance in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

<sup>14</sup> For more information on the history of the LIHEAP formula, see CRS Report RL33275, *Low-Income Home Energy Assistance Program (LIHEAP) Allocation Rates: Legislative History and Current Law*, by Julie Whittaker and Libby Perl.

programs,”<sup>15</sup> Congress implemented two “hold harmless” provisions in P.L. 98-558 to prevent states from losing too much funding. This resulted in the three-tier current law formula, which is described in more detail below.<sup>16</sup>

*Tier I.* The Tier I formula is used to allocate funds when the total LIHEAP regular fund appropriation is less than \$1.975 billion. Neither hold harmless provision applies at the Tier I level, and HHS allocates funds according to the allotment percentages used under the pre-1984 formula. The old formula is used because the amount of appropriated funds required to trigger the new formula is \$1.975 billion. The LIHEAP statute stipulates that for FY1986 and succeeding years, no state shall receive less money than it would have received in FY1984 had the LIHEAP funding in that year been \$1.975 billion.<sup>17</sup> According to HHS, then, the LIHEAP statute requires use of the old allotment percentages when funding is less than \$1.975 billion.<sup>18</sup> Until FY2006, funding levels for LIHEAP only twice exceeded the \$1.975 billion level, in FY1985 and FY1986. Thus, from FY1987 through FY2005, states continued to receive the same allotment percentages they received under the previous LIHEAP formula.

*Tier II.* For appropriations above \$1.975 billion and up to \$2.25 billion, the Tier II rate applies, and HHS uses the formula enacted in 1984 to calculate state allotments. Under the Tier II formula, a hold harmless *level* applies, and no state may receive less funding than it would have received under the Tier I distribution rate as it was in effect for FY1984, assuming a \$1.975 billion appropriation.<sup>19</sup> State allotment *percentages* may be different, however. To ensure that states receive their hold harmless levels of funding, those states that gain the most funding under the new formula must have their percentage share of funds ratably reduced to bring other states up to the hold harmless level.<sup>20</sup>

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<sup>15</sup> Report of the Committee on Energy and Commerce (H.Rept. 98-139, Part 2), to accompany H.R. 2439, May 15, 1984, p. 13.

<sup>16</sup> For more information on the percentage share of funds a state would receive at various levels of funding, see CRS Report RS21605, *Low-Income Home Energy Assistance Program (LIHEAP): Estimated Allocations*, by Libby Perl.

<sup>17</sup> 42 U.S.C. §8623(a)(2)(A).

<sup>18</sup> U.S. Department of Health and Human Services, *Low Income Home Energy Assistance Program: Report to Congress for FY1987*, p. 133. The statutory provision that provides for use of the old formula is 42 U.S.C. §8623(a)(3).

<sup>19</sup> Since this language was enacted, Congress further provided that HHS could use regular LIHEAP funds appropriations for Training and Technical Assistance (P.L. 99-425). It also authorized Leveraging Incentive Grants (P.L. 101-501) and the REACH option (P.L. 103-252) — both of which it generally funds out of regular LIHEAP funds. These debits on the regular funds account were not in place for FY1984. Because they affect the level of regular funds available for state grant allotments by a little more than \$25 million, it is possible but not certain that HHS would not implement the newer formula before a regular funds appropriation level of approximately \$2.0028 billion.

<sup>20</sup> 42 U.S.C. §8623(a)(3).

*Tier III.* The Tier III formula applies to funding levels at or above \$2.25 billion. The Tier III rate uses the Tier II methodology to distribute funds, but adds a second hold-harmless requirement, a hold harmless *rate*. States that would receive less than 1% of a \$2.25 billion appropriation must have their funds allocated using the rate that would have been used at a hypothetical \$2.14 billion appropriation (if this rate is greater than the calculated rate at \$2.25 billion). In both the Tier II and Tier III rates, a state will not be allocated less funds than the state received under the Tier I distribution as it was in effect in FY1984 (had the appropriation level been \$1.975 billion).

**Contingency Funds.** The statute currently provides an annual authorization of \$600 million for LIHEAP contingency funds (contingency funds are authorized indefinitely).<sup>21</sup> Appropriated contingency funds may only be released at the discretion of HHS and may be allocated to one or more states based on their needs. The statute authorizes the appropriation of contingency funds “to meet the additional home energy assistance needs of one or more states arising from a natural disaster or other emergency.” The term “emergency” is defined in the LIHEAP statute to include a natural disaster; a significant home energy supply shortage or disruption; significant increases in the cost of home energy, home energy disconnections, participation in public benefit programs, or unemployment; or an “event meeting such criteria as the [HHS] Secretary may determine to be appropriate.”

**Leveraging Incentive and REACH Funds.** In 1990, P.L. 101-501 amended the program statute to provide a separate funding authorization of \$50 million (\$30 million if regular funds appropriated are under \$1.4 billion) for incentive grants to states that leverage non-federal resources for their LIHEAP programs.<sup>22</sup> Such resources might include negotiated lower energy rates for low-income households or separate state funds. States are awarded incentive funds in a given fiscal year based on a formula that takes into account their previous fiscal year success in securing non-federal resources for their energy assistance program. In 1994 (P.L. 103-252) the statute was further amended to provide that of any incentive funds appropriated, up to 25% may be set aside for the Residential Energy Assistance Challenge Option (REACH). Under the REACH option states may be awarded competitive grants for their efforts to increase efficiency of energy usage among low-income families and to reduce those families’ vulnerability to homelessness and other health and safety risks due to high energy costs. The funding authorization for Leveraging Incentive and REACH grants is separate from regular funds, and the programs were not reauthorized in P.L. 109-58. In practice, however, Congress has funded these initiatives at \$22 million to \$30 million with dollars set-aside out of annual regular fund appropriations.

**Other Funds.** States are allowed to carry over unused funds from a previous fiscal year (limited to 10% of funds awarded a state). A diminishing amount of money may also be available from previously settled claims of price control violation

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<sup>21</sup> 42 U.S.C. §8621(e).

<sup>22</sup> 42 U.S.C. §8621(d).

by oil companies.<sup>23</sup> Finally states have the authority to transfer funds to LIHEAP from certain other federal block grants (including TANF).

## Legislative History

Since it was created by the Low Income Home Energy Assistance Act of 1981 (Title XXVI of P.L. 97-35), the LIHEAP program has been reauthorized or amended seven times. The legislation and some of the significant changes made are briefly discussed in the following paragraphs.

In 1984, P.L. 98-558, established a new formula by which regular LIHEAP funds are to be distributed in every year (after FY1985) in which regular appropriations exceed \$1.975 billion. This level of funding was exceeded in FY1986 and again in FY2006.

In 1986, P.L. 99-425 extended the program with few changes. In 1990, P.L. 101-501 created the Incentive Program for Leveraging Non-Federal Resources and authorized a July to June program year (or forward funding) for LIHEAP to allow state program directors to plan for the fall/winter heating season with knowledge of available money. This program year language was subsequently removed, although the statute now states that money appropriated in a given fiscal year is to be made available for obligation in the following fiscal year. Congress last provided advance appropriations for LIHEAP in the FY2000 appropriations cycle.

In 1993, P.L. 103-43 extended the authorization of LIHEAP for one year but made no other changes. In 1994 (P.L. 103-252) Congress stipulated that LIHEAP benefits and outreach activities target households with the greatest home energy needs (and costs), and it enacted a separate and permanent contingency funding authorization of \$600 million for each fiscal year. The 1994 law also established the competitive REACH grant option. In 1998, P.L. 105-285 authorized annual regular funding for each of FY2002-FY2004 at \$2 billion and made explicit a wide variety of situations under which HHS is authorized to release LIHEAP contingency funds.

Finally, in 2005 the Energy Policy Act (P.L. 109-58) reauthorized the program and raised the LIHEAP regular funds authorization level for FY2005 through FY2007 to \$5.1 billion. It also explicitly permitted the purchase of renewable fuels as part of providing LIHEAP assistance; required the Department of Energy to report on use of renewable fuels in provision of LIHEAP aid; required HHS to report (within one year of the legislation's enactment) on ways that the program could more effectively prevent loss of life due to extreme temperatures; and allowed the Secretary of the Interior, when disposing of in-kind oil and gas royalties taken from oil and gas leases, to grant a preference for the purpose of providing additional resources to support federal low-income energy assistance programs.

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<sup>23</sup> *LIHEAP Report to Congress, FY2003*, p. 11. For FY2002, \$3.3 million in oil overcharge funds was available to two states.

**Table 4. LIHEAP Funding by State, FY2004 to FY2007**  
(dollars in millions)

State	Total funds distributed <sup>a</sup> (regular and contingency)			Regular allotment	Contingency Distributed <sup>b</sup>	Total
	FY2004	FY2005	FY2006			
Alabama	\$15.4	\$19.9	\$31.787	\$16.673	—	\$16.673
Alaska	7.5	10.1	12.839	7.418	—	7.418
Arizona	6.9	7.7	14.230	7.448	—	7.448
Arkansas	11.8	13.5	23.336	12.796	—	12.796
California	82.4	91.7	156.441	89.199	—	89.199
Colorado	28.9	32.4	44.806	31.334	—	31.334
Connecticut	40.2	46.8	71.106	40.920	—	40.920
Delaware	5.3	6.2	10.954	5.431	—	5.431
District of Columbia	6.2	6.7	8.165	6.355	—	6.355
Florida	24.5	29.6	49.785	26.527	—	26.527
Georgia	19.4	22.5	40.026	20.979	—	20.979
Hawaii	1.9	2.2	2.567	2.113	—	2.113
Idaho	11.1	12.2	14.055	11.642	—	11.642
Illinois	104.5	117.2	193.814	113.259	—	113.259
Indiana	47.3	53.9	75.327	51.272	—	51.272
Iowa	33.5	38.9	52.054	36.343	—	36.343
Kansas	15.4	17.4	27.709	16.675	—	16.675
Kentucky	24.6	28.1	45.320	26.686	—	26.686
Louisiana	15.8	29.8	32.671	17.144	—	17.144
Maine	25.1	30.6	43.496	25.541	—	25.541
Maryland	30.8	34.2	61.889	31.332	—	31.332
Massachusetts	80.4	91.9	126.425	81.820	—	81.820
Michigan	105.0	112.5	153.615	106.543	—	106.543
Minnesota	71.5	84.0	110.849	77.469	—	77.469
Mississippi	13.2	27.4	27.415	14.350	—	14.350
Missouri	41.7	48.1	78.220	45.240	—	45.240
Montana	11.2	12.8	19.259	11.843	—	11.843
Nebraska	16.6	19.0	28.634	17.961	—	17.961
Nevada	3.5	4.0	7.247	3.809	—	3.809
New Hampshire	15.2	18.3	27.740	15.493	—	15.493
New Jersey	74.5	83.9	114.759	75.798	—	75.798
New Mexico	8.7	9.9	11.555	9.358	—	9.358
New York	243.4	277.9	381.719	247.980	—	247.980
North Carolina	33.6	40.6	71.125	36.319	—	36.319
North Dakota	12.4	14.0	19.272	12.753	—	12.753
Ohio	98.4	104.7	164.226	100.195	—	100.195
Oklahoma	13.0	14.7	26.921	13.991	—	13.991
Oregon	21.8	25.0	24.575	23.614	—	23.614
Pennsylvania	130.9	145.5	202.324	133.273	—	133.273
Rhode Island	13.2	15.1	23.066	13.435	—	13.435
South Carolina	12.3	14.6	25.279	13.318	—	13.318
South Dakota	9.6	11.6	16.540	10.410	—	10.410

State	Total funds distributed <sup>a</sup> (regular and contingency)			Regular allotment	Contingency Distributed <sup>b</sup>	Total
	FY2004	FY2005	FY2006			
Tennessee	24.9	28.3	47.139	27.033	—	27.033
Texas	40.7	46.2	84.005	44.144	—	44.144
Utah	14.0	14.7	22.848	14.233	—	14.233
Vermont	11.4	13.8	20.903	11.613	—	11.613
Virginia	37.5	41.7	75.053	38.166	—	38.166
Washington	35.4	39.9	39.631	38.355	—	38.355
West Virginia	17.4	18.5	24.543	17.660	—	17.660
Wisconsin	64.3	75.3	99.837	69.773	—	69.773
Wyoming	5.2	5.9	8.987	5.558	—	5.558
Subtotal	\$1,840	\$2,111	\$3,096	\$1,929	—	\$1,929
Tribes <sup>c</sup>	19.0	20.1	32.897	21.280	—	21.280
Territories <sup>d</sup>	2.5	2.9	3.456	2.644	—	2.644
Leveraging/REACH <sup>e</sup>	27.3	27.3	27.225	27.225	—	27.225
Training/Tech. Asst. <sup>f</sup>	0.3	0.3	.297	.297	—	.297
Total	\$1,889	\$2,162	\$3,160	\$1,980	—	\$1,980

**Source:** Table compiled by the Congressional Research Service (CRS) based on U.S. Department of Health and Human Services (HHS) data.

- a. The totals shown in these columns include regular fund allocations to states (net of the direct awards to tribes) and any contingency funds awarded to the state in that year.
- b. No contingency funds have been distributed in FY2007.
- c. This funding is made directly available to or for tribes but is reserved out of a given state's allotment amount. As prescribed in the statute, the tribal set-aside from a state gross allotment is based on tribal households in that state.
- d. The statute provides that HHS must set-aside not less than one-tenth of 1% and not more than one-half of 1% for use in the territories (American Samoa, Guam, Puerto Rico, Northern Mariana Islands, and the U.S. Virgin Islands).
- e. The statute provides a separate funding authorization for competitive grants under the leveraging incentive program (designed to encourage states to increase non-federal support for energy assistance). It also provides that up to 25% of any leveraging funds made available may be reserved for competitive REACH grants (for state efforts to increase efficient use of energy among low-income households and to reduce their vulnerability to homelessness and other problems due to high energy costs). The Congress has in recent years stipulated that a certain portion of the LIHEAP regular funds be set aside for leveraging grants and, of this amount, HHS has reserved 25% for REACH grants.
- f. The statute provides that HHS may reserve up to \$300,000 for making grants or entering into contracts with states, public agencies, or private nonprofits that provide training and technical assistance related to achieving the purposes of the LIHEAP program.

**Table 5. LIHEAP Funding: FY1982 to FY2007**  
(dollars in thousands)

Fiscal Year	Regular Funds <sup>a</sup>			Contingency Funds <sup>a</sup>		Total Distributed
	President's Request	Authorized	Appropriated	Appropriated	Distributed	
1982	\$1,400,000	\$1,875,000	\$1,875,000	—	—	\$1,875,000
1983	1,300,000	1,875,000	1,975,000	—	—	1,975,000
1984	1,300,000	1,875,000	2,075,000	—	—	2,075,000
1985	1,875,000	2,140,000	2,100,000	—	—	2,100,000
1986	2,097,765	2,275,000	2,100,000	—	—	2,100,000
1987	2,097,642	2,050,000	1,825,000	—	—	1,825,000
1988	1,237,000	2,132,000	1,531,840	—	—	1,531,840
1989	1,187,000	2,218,000	1,383,200	—	—	1,383,200
1990	1,100,000	2,307,000	1,443,000	—	—	1,443,000
1991	1,050,000	2,150,000	1,415,055	195,180	195,180	1,610,235
1992	1,025,000	2,230,000	1,500,000	300,000	0	1,500,000
1993	1,065,000	<i>ssan</i> <sup>b</sup>	1,346,030	595,200	0	1,346,030
1994	1,507,408	<i>ssan</i> <sup>b</sup>	1,437,402	600,000	300,000	1,737,402
1995	1,475,000	2,000,000	1,319,202	600,000	100,000	1,419,202
1996	1,319,204	2,000,000	900,000	180,000	180,000	1,080,000
1997	1,000,000	2,000,000	1,000,000	420,000	215,000	1,215,000
1998	1,000,000	2,000,000	1,000,000	300,000	160,000	1,160,000
1999	1,300,000	2,000,000	1,100,000	300,000	175,299	1,275,299
2000	1,400,000	<i>ssan</i> <sup>b</sup>	1,100,000	900,000	744,350 <sup>c</sup>	1,844,350 <sup>c</sup>
2001	1,400,000	<i>ssan</i> <sup>b</sup>	1,400,000	600,000	455,650	1,855,650
2002	1,400,000	2,000,000	1,700,000	300,000	100,000 <sup>d</sup>	1,800,000
2003	1,400,000	2,000,000	1,788,300 <sup>e</sup>	0	200,000 <sup>f</sup>	1,988,300
2004	1,700,000	2,000,000	1,789,380	99,410	99,410	1,888,790
2005	1,800,500 <sup>g</sup>	5,100,000	1,884,799	297,600	277,250	2,162,050
2006	1,800,000 <sup>g</sup>	5,100,000	2,480,000	681,000	679,960	3,160,000
2007	1,782,000	5,100,000	1,980,000	181,000	—	1,980,000

**Source:** Table prepared by the Congressional Research Service (CRS) based on HHS data.

- a. Amounts listed under the Regular Funds heading are for *regular* funding only. In 1994, Congress enacted a permanent \$600 million annual authorization for contingency funding. As shown, however, before this authorization contingency funds were sometimes made available.
- b. Such sums as necessary.
- c. President Clinton released \$400 million of these FY2000 contingency funds in late Sept. 2000 making it effectively available to states in FY2001.
- d. These funds were distributed out of the total FY2002 contingency appropriation (P.L. 107-116). With the end of FY2002, the remaining \$200 million of these contingency funds expired.
- e. The final FY2003 appropriations act (P.L. 108-7) included \$1.688 billion in new regular funds and converted into regular funds \$100 million of remaining contingency funds originally appropriated in FY2001 (P.L. 107-20).
- f. These funds were distributed out of contingency dollars appropriated as part of the FY2001 supplemental (P.L. 107-20). That law provided that the funds were “available until expended.” Congress subsequently converted some of these dollars into regular funds (see tablenote e).
- g. Of this amount, the President requested that \$500,000 be set aside for a national evaluation.